

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE LAMAR HARRIS,

Defendant-Appellant.

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UNPUBLISHED

October 19, 2001

No. 221719

Wayne Circuit Court

LC No. 98-011100

Before: Hoekstra, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant was charged with manslaughter, MCL 750.321, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Following a jury trial, he was convicted of the lesser offense of careless, reckless, or negligent discharge of a firearm causing injury or death, MCL 752.861, and felony-firearm. The trial court sentenced defendant to a prison term of sixteen to twenty-four months for the reckless discharge conviction to run consecutively to a five-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm the convictions, but remand for correction of the judgment of sentence.

Defendant first argues that his felony-firearm conviction must be vacated because he was acquitted of the felony manslaughter charge and convicted only of a lesser misdemeanor offense. Defendant maintains that the felony-firearm conviction is invalid because it is predicated on the commission of a misdemeanor rather than a felony. We disagree because the jury instructions required that the predicate offense for felony-firearm be manslaughter and, pursuant to *People v Lewis*, 415 Mich 443; 330 NW2d 16 (1982), a jury may render inconsistent verdicts.

Defendant's reliance on *People v Graves*, 458 Mich 476; 581 NW2d 229 (1998), for the proposition that the rule in *Lewis* has been abandoned is misplaced. The issue before our Supreme Court in *Graves* involved the proper standard for determining when a new trial should be ordered where a jury is permitted to consider a charge unwarranted by the proofs and convicts the defendant of a lesser charge. The Supreme Court abandoned an automatic reversal rule in this context in favor of the harmless error standard applicable to other trial errors. Where, as here, defendant does not seek a new trial, but is requesting that his felony-firearm conviction be vacated, we find that *Lewis* is still controlling.

Although defendant also claims that additional instructions given to the jury during deliberations may have caused confusion, because defense counsel expressly approved the additional instructions, any claim of error in this regard is waived. See *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000).

Although we find no basis for vacating defendant's felony-firearm conviction, we note that consecutive sentencing was not permitted here because defendant was convicted only of a lesser misdemeanor offense, not the underlying felony. In *People v Smith*, 423 Mich 427, 434; 378 NW2d 384 (1985), our Supreme Court stated that "the Legislature intended two-year misdemeanors to be considered as misdemeanors for purposes of the Penal Code, but as felonies for purposes of the Code of Criminal Procedure's habitual-offender, probation, and consecutive sentencing statutes." Citing *Smith*, this Court has recognized that a misdemeanor cannot be deemed a felony for purposes of the Penal Code, including the felony-firearm statute. *People v Williams*, 243 Mich App 333, 335; 620 NW2d 906 (2000); *People v Baker*, 207 Mich App 224, 225; 523 NW2d 882 (1994). Because the felony-firearm statute authorizes a consecutive sentence to a "term of imprisonment imposed for *the conviction of the felony*," MCL 750.227b(2) (emphasis supplied), and because that statute is part of the Penal Code, a two-year misdemeanor is not considered a felony for purposes of that statute's consecutive sentencing provision. Thus, pursuant to our authority to go beyond the issues raised and to grant further or different relief as a case requires, we remand this case to the trial court for correction of the judgment of sentence to reflect that defendant's sentences are to be served concurrently. See MCR 7.216(A)(7); *People v Cain*, 238 Mich App 95, 127; 605 NW2d 28 (1999).

In light of our holding that concurrent sentences are required, it is unnecessary to address defendant's claim that the trial court relied on inaccurate information at sentencing when determining the sentence for defendant's careless, reckless, or negligent discharge conviction. Because the effect of concurrent sentences means that defendant will have fully served his term for that conviction, this issue is moot. See *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994) ("Where a subsequent event renders it impossible for this Court to fashion a remedy, an issue becomes moot.").

Defendant's convictions are affirmed, but we remand for correction of the judgment of sentence to reflect that defendant's sentences are to be served concurrently. We do not retain jurisdiction.

/s/ Joel P. Hoekstra  
/s/ Michael J. Talbot  
/s/ Brian K. Zahra